

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Media Bureau Seeks Comment on Petition for	)	
Rulemaking Seeking to Allow the Sole Use of	)	MB Docket No. 16-410
Internet Sources for FCC EEO Recruitment	)	
Requirements	)	
	)	
Review of the Commission's Broadcast and	)	MM Docket No. 98-204
Cable Equal Employment Opportunity Rules	)	
and Policies	)	

**COMMENTS OF ALPHA MEDIA LLC, EMMIS COMMUNICATIONS CORPORATION,  
GRAY TELEVISION, INC., LIBERMAN BROADCASTING, INC., MB REVOLUTION  
LLC, NEW YORK PUBLIC RADIO, AND RADIO VERMONT  
("JOINT BROADCAST COMMENTERS")**

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## **I. INTRODUCTION AND SUMMARY**

Joint Broadcast Commenters,<sup>1</sup> by counsel, submit these comments in support of the request of Sun Valley Radio, Inc. and Canyon Media Corporation (collectively, “Petitioners”) to modernize the Federal Communications Commission’s (“FCC” or “Commission”) interpretation of its equal employment opportunity (“EEO”) rules to reflect the realities of how companies recruit and job seekers find placement in today’s online world. In adopting the EEO rules fifteen years ago, the Commission appropriately afforded licensees flexibility in determining how best to craft their employment outreach efforts. Now, as the Commission has done in other contexts, it is time to modernize the agency’s approach to assessing the means a broadcaster uses to fulfill its obligations under the EEO rules. The Internet has changed how Americans interact with each other, including how we look for jobs. The Commission should recognize this fundamental shift and alter its interpretation of the EEO rules to sanction broadcasters’ use of Internet-only recruitment sources to fulfill Prong 1 of its outreach requirement, the obligation to widely disseminate information concerning each full-time job vacancy. Additionally, we urge the Commission not to impose an additional requirement that any Internet-only outreach be coupled with on-air announcements as doing so would reverse the very flexibility that the Commission sought to provide to broadcasters fifteen years ago.

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<sup>1</sup> The Joint Broadcast Commenters are: Alpha Media LLC, Emmis Communications Corporation, Gray Television, Inc., Liberman Broadcasting, Inc., MB Revolution LLC, New York Public Radio, and Radio Vermont. Collectively, according to BIA, the Joint Broadcast Commenters represent 86 television stations in 59 markets, and 306 radio stations in 55 markets across the nation.

## II. THE COMMISSION’S EEO RULES SHOULD REFLECT THE MODERN INTERNET AGE AND THE REALITIES OF THE CONTEMPORARY EMPLOYMENT MARKETPLACE.

In 2002, the Commission determined that Internet-only recruitment was insufficient to satisfy the EEO rules’ broad outreach requirement because “Internet usage ha[d] [not] become sufficiently widespread to justify allowing it to be used as the sole recruitment source.”<sup>2</sup> Today—a full fifteen years later—the Commission’s statement can only be viewed as “remarkably outdated.”<sup>3</sup> In 2002, a mere 53.9% of individuals used the Internet;<sup>4</sup> today, however, Internet access is ubiquitous, with “[s]ome form of broadband, whether fixed or mobile, [being] available to **almost 99 percent** of the U.S. population.”<sup>5</sup> This growth has occurred for home broadband use and for mobile broadband use alike. Today, 73% of Americans have high speed broadband service at home as compared to just 15% in 2002.<sup>6</sup> And 77% of Americans have smartphones today—allowing them access to the Internet, regardless of their location.<sup>7</sup> Additionally, ownership of wireless devices other than smartphones has grown exponentially in recent years: in 2010, only 3% of Americans owned tablets, whereas today, 51% of Americans do.<sup>8</sup> The active number of wireless devices in the United States—including

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<sup>2</sup> See *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24051 (¶ 99) (Nov. 20, 2002) (“2002 EEO Order”).

<sup>3</sup> See Michael O’Rielly, *Embrace the Internet for EEO “Widely Disseminated Rule,”* FCC Blog, (Feb. 20, 2015), <https://www.fcc.gov/news-events/blog/2015/02/20/embrace-internet-eeo-widely-disseminated-rule> (“O’Rielly Blog Post”).

<sup>4</sup> See 2002 EEO Order at 25050-51 (¶ 98).

<sup>5</sup> *Exploring the Digital Nation: Embracing the Mobile Internet*, U.S. Dept. of Commerce, NTIA, at i (Oct. 2014), available at <http://www.ntia.doc.gov/report/2014/exploring-digital-nation-embracing-mobile-internet> (“2014 NTIA Survey”) (emphasis added).

<sup>6</sup> *Internet/Broadband Fact Sheet*, Pew Research Center—Internet Science & Tech (Jan. 12, 2017), <http://www.pewinternet.org/fact-sheet/internet-broadband/> (“Internet/Broadband Fact Sheet”).

<sup>7</sup> *Mobile Fact Sheet*, Pew Research Center—Internet, Science & Tech (Jan. 12, 2017), <http://www.pewinternet.org/fact-sheet/mobile/> (“Mobile Fact Sheet”).

<sup>8</sup> *Id.*

smartphones and tablets—is an astonishing 377.9 million, up from 207.9 million 2005.<sup>9</sup> This number puts wireless penetration well above 100%, meaning there are more active wireless units than there are people in the United States.<sup>10</sup>

The ubiquitous nature of the Internet has altered the behavior and expectations of consumers. “The internet represents a fundamental shift in how Americans connect with one another, gather information and conduct their day-to-day lives.”<sup>11</sup> For example, smartphone users “use their phone[s] to help navigate numerous important life events,” from looking up information about a health condition (62%) to online banking (57%).<sup>12</sup> Consumers have come to rely on the Internet in general for information that informs their decisions. One survey shows that 85% of people use the Internet to find advice or support about their children, and 87% use the Internet to compare options for personal finances.<sup>13</sup>

Similarly, the Internet has fundamentally changed the behaviors and expectations of job seekers. Job seekers today rely on the Internet as an “essential” and even “universal” resource.<sup>14</sup> The Internet is now used more than personal connections, professional contacts, employment

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<sup>9</sup> *Annual Wireless Industry Survey*, CTIA (2015), <http://www.ctia.org/industry-data/ctia-annual-wireless-industry-survey>.

<sup>10</sup> *Id.* (recording wireless penetration at 115.7%).

<sup>11</sup> *Internet/Broadband Fact Sheet*.

<sup>12</sup> *U.S. Smartphone Use in 2015*, Pew Research Center, at 5 (Apr. 1, 2015), [http://www.pewinternet.org/files/2015/03/PI\\_Smartphones\\_0401151.pdf](http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf) (“*U.S. Smartphone Use in 2015*”).

<sup>13</sup> *Understanding the Role of the Internet in the Lives of Consumers*, Fleishman-Hilliard and Harris Interactive, at 9 (2012), available at <http://cdn.fleishmanhilliard.com/wp-content/uploads/2013/06/2012-DII-White-Paper.pdf>.

<sup>14</sup> Aaron Smith, *Searching for Work in the Digital Era*, Pew Research Center, at 2, 9 (Nov. 19, 2015), [http://www.pewinternet.org/files/2015/11/PI\\_2015-11-19-Internet-and-Job-Seeking\\_FINAL.pdf](http://www.pewinternet.org/files/2015/11/PI_2015-11-19-Internet-and-Job-Seeking_FINAL.pdf) (explaining that “[r]esearching and applying for jobs online is nearly universal among recent job seekers”) (“*Searching for Work in the Digital Era*”).

agencies, print advertisements, or job fairs in the job hunt.<sup>15</sup> Those seeking employment use both fixed and mobile broadband in their employment searches; in fact, 43% of smartphone owners have used their phone in the past year to find information about a job, and 18% have actually submitted a job application using their phone.<sup>16</sup> Moreover, job seekers are comfortable using the Internet in the job search: 86% of Americans agree it would be easy to fill out a job application online, and 85% feel it would be easy to find available jobs in their area online.<sup>17</sup>

Employers also rely heavily on the Internet in today's marketplace. According to a recent study, only 4% of recruiters do *not* use social media in the recruiting process.<sup>18</sup> The sheer variety of offerings—from job boards to job aggregators to social media platforms—and the popularity of each illustrates how the job market has fundamentally changed. In fact, the top three sites—Indeed, Monster, and GlassDoor—get an estimated 120 million unique visitors each month.<sup>19</sup> What is more, online job boards, aggregators, and social media platforms are performing better than other, non-Internet based external sources for recruiting. A recent study shows that Indeed, an online job aggregator, was the source of 52% of external interviews and 43% of external hires in 2015.<sup>20</sup> After Indeed, the largest sources for external interviews were Career Builder (8%), recruiting agencies (5%), Craigslist (5%), LinkedIn (5%), campus

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<sup>15</sup> *Id.* at 2 (showing that 79% of Americans who have looked for jobs in the past two years have used online resources and information, which is more than any of these other sources).

<sup>16</sup> *U.S. Smartphone Use in 2015* at 5.

<sup>17</sup> *Searching for Work in the Digital Era* at 6.

<sup>18</sup> *The Jobvite Recruiter Nation Survey*, Jobvite (2015), <http://www.jobvite.com/blog/welcome-to-the-2015-recruiter-nation-formerly-known-as-the-social-recruiting-survey/>.

<sup>19</sup> *Top 15 Most Popular Job Websites*, eBiz (Jan. 2017), <http://www.ebizmba.com/articles/job-websites>.

<sup>20</sup> Roy Maurer, *Indeed Dominate External Sources of Hire, Survey Finds*, Society for Human Resource Management (May 2, 2016), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/indeed-dominates-external-sources-of-hire-survey-finds.aspx>.

recruiting (3%), and Monster (2%).<sup>21</sup> Only two sources listed above—recruiting agencies and campus recruiting—are not Internet-based. As Commissioner O’Rielly affirmed: “The Internet has become a central component in personal networking and job identification. In fact, many, if not most, jobs in America require applicants to apply via the Internet. Even the FCC requires applicants to apply online unless it would be a hardship.”<sup>22</sup>

Online recruitment sources play a crucial role in the broadcasting job market. Broadcasters report that the information they post via non-Internet sources is often routinely compiled and made available online by third parties, such as online job aggregators. And they find that the response from these Internet sources is often better than the response from the local non-Internet source because they are reaching a wider audience. Many recruiters for broadcasters say unequivocally that ensuring non-Internet recruitment efforts take place for each and every full-time vacancy represents merely an administrative burden, as these non-Internet efforts do not provide substantive support for the most effective talent acquisition strategies, which occur online. Additionally, television broadcasters routinely recruit nationally for anchor and management positions and find that print and brick-and-mortar advertising are ineffective in reaching this larger talent pool. This evidence further illustrates that job seekers, including broadcast industry job seekers, rely heavily on the Internet as a source of information.

The Commission cannot continue to ignore the realities of the marketplace any longer. In other proceedings, the Commission has acknowledged the explosive growth of the Internet and its transformative effect on society, and it has modernized its rules and policies accordingly. For example, the Commission updated its existing television public file rules to move public files

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<sup>21</sup> *Id.*

<sup>22</sup> *See O’Rielly Blog Post.*

online.<sup>23</sup> In doing so, the Commission stated that “[t]he television broadcast industry should not be left out of the online revolution that has improved the delivery of products and services across our economy . . . .”<sup>24</sup> Similarly, in modernizing the contest rules, the Commission cited the “ubiquitous nature of the Internet and current consumer expectations about how to obtain information” as reasons that precipitated the change.<sup>25</sup> Then-Commissioner Pai praised the update to the contest rules, explaining that “[t]his is a good example of how the Commission can make sure that our rules reflect the modern marketplace. From AM radio to the IP transition, I hope that we will continue to work together to ease outdated regulatory burdens in the months to come.”<sup>26</sup> The Commission’s current interpretation regarding the use of Internet-only sources is an outdated burden that cannot be squared with the 21<sup>st</sup> Century realities of the employment marketplace.<sup>27</sup>

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<sup>23</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Second Report and Order, 27 FCC Rcd 4535 (Apr. 27, 2012).

<sup>24</sup> *Id.* at 4540 (¶ 10).

<sup>25</sup> *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226, Report and Order, 30 FCC Rcd 10468, 10471 (¶ 6) (Sept. 17, 2015) (“2015 Contest Order”). In other instances, the Commission has recognized how the Internet has altered the landscape. *See 2010 Quadrennial Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17490-91 (¶ 2) (2011) (noting that “[t]he proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace” and “[c]onsumers are increasingly turning to online and mobile platforms to access news content and audio and video programming”).

<sup>26</sup> *2015 Contest Order* at 10490 (Statement of Commissioner Pai). Additionally, as the Petitioners note, Commissioner O’Rielly has written publicly about wanting to modernize the EEO policy and do away with the Internet-only interpretation.

<sup>27</sup> *See O’Rielly Blog Post* (“[W]e need to recognize the current marketplace realities in terms of what types of communication should qualify as ‘widely disseminated.’”).

### **III. THE COMMISSION’S CONCERNS REGARDING INTERNET-ONLY RECRUITMENT HAVE BEEN ADDRESSED BY THE EXPLOSIVE GROWTH OF THE INTERNET.**

In 2002, the Commission expressed concern that there were continuing disparities in Internet usage among certain segments of society.<sup>28</sup> Today, although adoption gaps still remain based on demographic factors, they are significantly narrower. A recent Pew Research survey shows that the percentage of people who use the Internet is nearly the same across races: 88% White, 85% Black, and 88% Hispanic.<sup>29</sup> In 2002, by contrast, the gap between White and Black use of the Internet was 13 points.<sup>30</sup> Another recent study found that “millennials across racial and ethnic groups use digital technology at similar rates.”<sup>31</sup> That study shows, for example, that just over 90% of White, African American, and Hispanic millennials use smartphones.<sup>32</sup> Similarly, the gap for Internet use between urban, suburban, and rural communities has narrowed—89% Urban, 90% Suburban, and 81% Rural today, versus 61% Urban, 63% Suburban, and 49% Rural in 2002.<sup>33</sup>

The surge in mobile technology has helped to narrow digital divides. Non-Whites rely on smartphones for online access, for example, at a higher rate than Whites.<sup>34</sup> And minority populations and lower income smartphone owners are more likely to use mobile devices to access career opportunities.<sup>35</sup> Additionally, broadband access at public libraries has helped to

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<sup>28</sup> 2002 EEO Order at 25050-51 (¶¶ 98-99).

<sup>29</sup> *Internet/Broadband Fact Sheet*.

<sup>30</sup> *Id.*

<sup>31</sup> Rande Price, *Mobile Technology Bridges the Digital Divide*, Digital Content Next (Aug. 26, 2015), <https://digitalcontentnext.org/blog/2015/08/26/mobile-technology-bridges-the-digital-divide/>.

<sup>32</sup> *Id.*

<sup>33</sup> *Internet/Broadband Fact Sheet*.

<sup>34</sup> *Mobile Fact Sheet*.

<sup>35</sup> *U.S. Smartphone Use in 2015* at 21.



bridge these gaps.<sup>36</sup> Among the groups of people who report the highest percentages of Internet use at public libraries are unemployed people and African Americans, Asian Americans, and Hispanics.<sup>37</sup> As Commissioner O’Rielly highlighted, “nearly 100 percent of public libraries offer ‘workforce development training programs, online job resources, and technology skills training’ and 98 percent offer free public access Wi-Fi.”<sup>38</sup>

With the concerns about the digital divide being lessened by the continued expansion of broadband across all population segments, by the mobility revolution, and by the Commission’s work to transform public libraries into “information hubs,”<sup>39</sup> the Commission should move forward with modernizing its interpretation of its EEO rules and recognize that in today’s marketplace, it is possible to widely disseminate job opportunities solely using Internet sources.

#### **IV. THE PROPOSED REVISED INTERPRETATION WILL NOT ALTER THE EXISTING EEO RULES OR DILUTE BROADCASTERS’ OBLIGATIONS THEREUNDER.**

Joint Broadcast Commenters agree that “[t]his proposal is not an attempt to cut back on the underlying obligations to recruit for job openings.”<sup>40</sup> We will continue to “use recruitment sources for each vacancy sufficient in [the station employment unit’s] reasonable, good faith judgment to widely disseminate information concerning the vacancy.”<sup>41</sup> Joint Broadcast Commenters agree with Commissioner O’Rielly, who said:

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<sup>36</sup> *Universal Service Program for Schools and Libraries (E-Rate)*, FCC, Consumer and Governmental Affairs Bureau (last updated Jan. 13, 2015), <https://www.fcc.gov/general/universal-service-program-schools-and-libraries-e-rate>.

<sup>37</sup> *2014 NTIA Survey* at 21.

<sup>38</sup> *See O’Rielly Blog Post*.

<sup>39</sup> *See id.*

<sup>40</sup> Sun Valley Radio, Inc. and Canyon Media Corporation, Petition for Rulemaking, at 1 (filed Dec. 12, 2016) (“*Petition*”).

<sup>41</sup> 47 C.F.R. §73.2080(c).

[We are] not suggesting in any way that [the FCC] alter[s] or modif[ies its] overall EEO requirements. [We] wholeheartedly agree that wide dissemination of information about job opportunities can be one key element to assembling a diverse applicant pool. However, [the FCC] need[s] to recognize the current marketplace realities in terms of what types of communication should qualify as “widely disseminated.”<sup>42</sup>

Importantly, because the request does not seek to modify the Commission’s EEO rules, but only seeks to update the current interpretation of what satisfies the “wide dissemination” requirement, the Commission need not resolve this issue through a rulemaking proceeding. Instead, the Commission may easily resolve this issue with a Declaratory Ruling, as granting the requested relief is well within the agency’s power to, “on its own motion[,] issue a declaratory ruling terminating a controversy or removing uncertainty.”<sup>43</sup>

Finally, there is no need to impose any additional burden on the recruitment practices of broadcasters, such as affirmatively mandating on-air announcements of job openings.<sup>44</sup> Broadcasters will continue to be bound by the EEO rules, which have worked effectively to broaden the outreach regarding full-time job vacancies. In adopting the 2002 rules, the Commission was guided by the principle that broadcasters should have considerable flexibility: “[e]ntities will have broad discretion as to the type of recruitment sources they will use [and] the number of recruitment sources they will use.”<sup>45</sup> The Commission wisely afforded broadcasters the flexibility to implement an outreach program that works for the individual broadcaster and community. The current rules “neither require[] nor preclude[] the use of any number or type of sources a broadcaster deems appropriate to achieve broad outreach.”<sup>46</sup> Yet, they also provide a

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<sup>42</sup> See *O’Rielly Blog Post*.

<sup>43</sup> 47 C.F.R. 1.2(a).

<sup>44</sup> See *Petition* at 1 (requesting that “the Commission . . . modify its EEO policies in order to allow broadcasters, if they so choose, to rely on Internet recruitment sources, coupled with their on-air advertising, when conducting outreach for new job openings”).

<sup>45</sup> 2002 *EEO Order* at 24043 (¶ 70).

<sup>46</sup> *Id.* at 24049 (¶ 94).

“wide dissemination” benchmark, which provides broadcasters both a tool to measure the productivity of employment outreach and also a standard below which they can not go. This policy has worked well. The Commission should not sacrifice flexibility in the name of modernization; the EEO rules can reflect the realities of the 21<sup>st</sup> Century without rigidity.

## **V. CONCLUSION**

For the reasons set forth above, Joint Broadcast Commenters respectfully request that the Commission update its interpretation of the EEO rules to allow broadcasters to rely solely on Internet recruitment sources to fulfill their obligations to widely disseminate information concerning each full-time job vacancy, without a corresponding obligation to make on-air announcements.

Respectfully submitted,

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